APPENDIX AND SPECIFICATION OF ERRORS

The following points of error were assigned in the courts below as the same point of error, and are specifically brought forward and made a part of this petition:

POINT NUMBER ONE

The error of the Court of Civil Appeals in reviewing the record in the light most favorable to respondent, contrary to the verdict of the jury and judgment of the trial court. (Germane to Assignment of Error No. VI, Second Motion for Rehearing, Court of Civil Appeals.)

POINT NUMBER TWO

The error of the Court of Civil Appeals in holding there was no evidence to support petitioner's claim. (Germane to Assignments of Error Nos. I and VI, Second Motion for Rehearing, Court of Civil Appeals.)

POINT NUMBER THREE

The trial court properly rendered judgment for petitioner on the jury's answer to Special Issues Numbers 5A, 5B, and 5C, thereby holding in effect that respondent's objections and exceptions thereto were without merit, and that the answers thereto were not in conflict with the answers to Special Issues Numbers 3 and 4; and the Court of Civil Appeals erred in not so holding. (Germane to Assignments of Error Nos. II, V, and VI, Second Motion for Rehearing, Court of Civil Appeals.)

POINT NUMBER FOUR

The Court of Civil Appeals erred in holding that Special Issue No. 5-A and the corollary issues thereto constitute a general submission, thereby obliterating from the law of the State of Texas the employers' duty of adopting a reasonably safe method for the performance of work by its employees, under the guise of holding that in the only form in which it could possibly be submitted, it is a general submission. (Germane to Assignment of Error No. V, Second Motion for Rehearing, Court of Civil Appeals.)

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CHARLES ELMORE CROPLEY
CLERK

No. 164

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

OLLIE B. ROBERTS, *Petitioner*

VS.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, OF TEXAS, *Respondent*

ANSWER OF RESPONDENT TO PETITION FOR REHEARING ON ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE 5TH SUPREME JUDICIAL DISTRICT OF TEXAS AT DALLAS, TEXAS.

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Respectfully contending that the denial of the petition for a writ of certiorari herein ought not to be disturbed, and that the petition for re-hearing should be denied, Respondent, Missouri-Kansas-Texas Railroad Company of Texas, respectfully says:

PETITIONER HAS ADVANCED NO REASON JUSTIFYING A RE-HEARING OF HIS PETITION FOR A WRIT OF CERTIORARI.

Petitioner's entire plea for a re-hearing may be aptly summarized in three sentences:

(1). That petitioner's case admittedly is not of sufficient importance to warrant the granting of a writ of certiorari by this Court.

(2). That a writ of certiorari ought to issue in this cause because of subsequent decisions in Texas in three other cases, the records of which are not before this Court.

(3). Flattering remarks addressed to this Court to induce this Court in self adulation to improvidently grant a writ of certiorari.

Of the three cases cited by petitioner, two deserve further comment. In Missouri-Kansas-Texas R. R. Company of Texas vs. Webb, 229 S.W. 2d 209, plaintiff introduced evidence of the life expectancy of men who were the same age as plaintiff, as well as annuity values based thereon. A reversal followed the refusal of the trial court to permit the defendant to show in rebuttal that locomotive engineers, as was plaintiff, because of their extra hazardous occupation, had a lower life expectancy than the ordinary man. The case of Armstrong vs. Missouri-Kansas-Texas Railroad Company of Texas, (not yet reported) is at the time of the writing hereof not a final adjudication,

but is now pending on motion for re-hearing in The Court of Civil Appeals at Dallas, Texas. The opinion in that cause reveals that there were errors committed against the railroad company, which, in any event, would have been fatal to any recovery by plaintiff.

There has been no departure from or evasion of either the spirit or intent of The Federal Employers' Liability Act. To the contrary, the decisions of the Texas Courts reveal a full awareness of the nature and scope, as well as a conscientious effort to follow the inunciated decisions of this Court. Kansas City Southern Ry. Co. vs. Chandler, (er. ref. n. r. e.) 192 S.W. 2d 304; Texas & P. Ry. Co. v. Mix, 193 S.W. 2d 542; Henwood v. Neal, 198 S.W. 2d 125; MKT R. Co. v. Waddles, 203 S.W. 2d 350; Hallaway v. Thompson, 226 S.W. 2d 816.

Petitioner refers repeatedly to the loss of the jury function. It is again reiterated that petitioner's case was tried before a jury and that the jury found against him upon the only specific fact issue submitted.

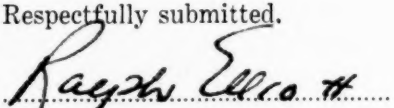
The Texas Court below simply held in accordance with the well recognized rules of construction that the general averments of petitioner's complaint were controlled by the specific allegations in that regard. It was likewise correctly held that the general finding by the jury was controlled by the specific finding of the jury made in that regard.

Petitioner likewise continually refers to the approval of this Court flowing from its denial of the writ of cer-

tiorari. This Court has repeatedly held that the denial of a writ of certiorari is no expression or indication of approval concerning the merits of or the results reached in the case under consideration. Stamey vs. U. S., 37 Fed. 2d 188; Atlantic Coast Line R. R. Company vs. Powie, 283 U. S. 401, 75 Law Ed. 1142, 51 S. Ct. 498; U. S. vs. Carver, 260 U. S. 482, 67 Law Ed. 361, 43 S. Ct. 181.

Having himself admitted that his case, in itself, is not of sufficient importance to warrant the attention of this Court, it is respectfully submitted that this litigation ought to be finally ended by the denial of the petition for re-hearing.

Respectfully submitted.



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A copy of the foregoing answer has been heretofore furnished to the Honorable Neilson Rogers, Attorney for Respondent, Ollie B. Roberts, at his office in Sherman, Texas.